BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JULIE R. HAMILTON	)	
Claimant	)	
	)	
VS.	)	
	)	
FABRIC PRINT, INC.	)	
Uninsured Respondent	)	Docket No. **1,035,257**
	)	
AND	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

Workers Compensation Fund and respondent request review of the August 7, 2007 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

The Administrative Law Judge (ALJ) determined claimant met her burden of proof to establish she suffered accidental injury arising out of and in the course of her employment and provided timely notice.

Both the Workers Compensation Fund and respondent request review of whether claimant's accidental injury arose out of and in the course of employment. Respondent argues there is no medical evidence regarding causation and therefore claimant has not sustained her burden of proof that she sustained a compensable injury. The Fund also argues claimant did not sustain her burden of proof in the absence of medical causation evidence.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant began working for respondent in 2002 or 2003. The respondent is a silk-screening company that makes custom T-shirts. Claimant's job duties included taking out the trash, cleaning offices, folding t-shirts and bags. But her primary job duty was cleaning off the screens using a spray bottle which required intensive repetitive use of her hands. She would use an ink degradant in a spray bottle (3-5 sprays), sponge or brush the screen and then the power wash the ink off. The second step is using an emulsion remover in the No. 2 sprayer (squeezing 4-5 times), rub the screen gently and then power wash again. The last step was washing the front and back of the screen with soap and water by brushing it on. Claimant testified she cleaned approximately 30-50 screens a day, one screen at a time. She alternated hands and as one got tired or started hurting she would switch hands.

Sometime in 2006 claimant noticed her hands began to hurt and burn. Claimant testified her hands significantly worsened in May 2007 because her hands felt like they were on fire. Claimant notified the owner, Majid Zari, in May 2007 about her hand problems. As Mr. Zari declined to provide medical treatment she sought treatment on her own and was diagnosed with bilateral carpal tunnel syndrome. The last day claimant worked was May 18, 2007.

On May 24, 2007, claimant gave Mr. Zari a note from Dr. Appl. She also asked Mr. Zari for a week of vacation pay. Dr. Mark Maguire performed bilateral open carpal tunnel releases on claimant on May 31, 2007.

Majid Zari, respondent's owner, testified claimant averaged 20 screens a day. He further testified he was not aware of claimant's allegation she hurt her hands at work until he received a doctor's excuse on May 24, 2007.

The ALJ analyzed the evidence in the following fashion:

> There were no medical reports stating whether the claimant's carpal tunnel was work related or not. The claimant associated her hand problems with her job duties, and the claimant's testimony itself is substantial evidence of causation. The kind of activities she described with the spray bottles and the pressure washer wand are grasping activities commonly seen in workers compensation carpal tunnel claims. Even if the activity was as little as 2 hours per day, as suggested by Mr. Zari, it seems plausible that the activity caused the hand symptoms, as the claimant alleged. There was no evidence of another source for the claimant's carpal tunnel syndrome.
>
> The claimant proved by a preponderance of the evidence that she contracted carpal tunnel syndrome in both upper extremities in the course and scope of her employment with the respondent.[1]

[1] ALJ Order (Aug. 7, 2007) at 2.

This Board member agrees and affirms. Moreover, medical evidence is not essential or necessary to establish the existence of a worker's injury. A claimant's testimony alone is sufficient evidence.[2]

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[3] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[4]

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated August 7, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2007.

_____
BOARD MEMBER

c: John G. O'Connor, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent
Jeffrey S. Austin, Attorney for Fund
Kenneth J. Hursh, Administrative Law Judge

[2] *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999); *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001).

[3] K.S.A. 44-534a.

[4] K.S.A. 2006 Supp. 44-555c(k).